

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 51

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

TED HOBBS

AN ACT

**RELATING TO THE RESTRUCTURE OF THE ELECTRIC INDUSTRY;
ESTABLISHING A PLANNING STRUCTURE AND TERMS AND CONDITIONS OF
THE EVENTUAL RESTRUCTURE OF THE ELECTRIC INDUSTRY; PERMITTING
VOLUNTARY RATE REDUCTIONS; CREATING AN OVERSIGHT COMMITTEE AND
ADVISORY STUDY PANELS; ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. -- This act may be cited as the
"Electric Industry Restructuring Planning Act".**

Section 2. FINDINGS AND PURPOSES. --

A. The legislature finds that:

**(1) the generation and sale of electricity is
becoming a competitive industry;**

(2) electric service customers in New Mexico

Underscored material = new
[bracketed material] = delete

1 should have the opportunity to benefit from competition in
2 this industry and should have the freedom to choose their
3 suppliers of electricity and related services in a competitive
4 market;

5 (3) competition in the retail market for
6 electricity is intended to have long-term benefits for the
7 economy of New Mexico, including lower prices for electric
8 service to all customers, more efficient use of resources and
9 innovations in services and supply;

10 (4) a collaborative effort on the restructure
11 of the electric industry has been conducted with the
12 participation of representatives of the New Mexico public
13 utility commission, customers, anticipated competitors, other
14 interests and the industry. This collaborative effort ended
15 with certain consensus achieved and insights acquired. The
16 industry, representatives of customer interests and branches
17 and divisions of government have examined the competitive
18 restructure of this industry during the recent past and the
19 information, consensuses and concerns resulting from these
20 efforts should be included in the continuing planning to
21 achieve the restructure of this industry; and

22 (5) it is necessary to continue studies for
23 the comprehensive implementation of a restructure of the
24 electric utility industry to ensure that the public interest
25 is best served by a restructure. It is necessary to provide

Underscored material = new
[bracketed material] = delete

1 and establish direction for all aspects of the restructure, to
2 provide for continuing study and to prepare comprehensive
3 implementing legislation for presentation and consideration by
4 the forty-fourth legislature.

5 B. The purposes of the Electric Industry
6 Restructuring Planning Act are to:

7 (1) provide a framework and time schedule for
8 further evaluative studies and the restructure of the electric
9 industry to prepare for competition;

10 (2) permit the legislature, regulators,
11 industry and customers to further evaluate and determine the
12 best methodologies to implement the restructure of the
13 electric industry for competitive supply and services, other
14 than transmission and distribution of electricity, to
15 customers in this state;

16 (3) expressly state the intention of the
17 legislature to permit on January 1, 2001 competition in this
18 industry to benefit customers and to state the policies of the
19 legislature regarding stranded and transition cost recovery
20 and the divestiture of existing electric operations from
21 intended competitive electric services in preparation for
22 competition;

23 (4) ensure that all alternatives are
24 considered and evaluated to address major issues associated
25 with the restructure of the electric industry;

. 119860. 4

Underscored material = new
[bracketed material] = delete

1 (5) provide for the orderly restructure of
2 the electric industry to allow direct access by retail
3 customers to the competitive market for electricity supply and
4 energy services while maintaining and ensuring the safety and
5 reliability of the electric service, supply and system in this
6 state;

7 (6) ensure that the competitive component
8 suppliers and the regulated component suppliers of the
9 restructured electric industry, including electric suppliers
10 not operating in New Mexico before January 1, 2001, have fair
11 and equitable opportunities to prepare for competition and the
12 resulting changes in the regulated components of this
13 industry; and

14 (7) preserve the interests and recognize the
15 self-regulation of rural electric cooperatives and municipal
16 utilities by establishing an option for these entities to
17 determine their involvement in the competitive market, if any,
18 on terms that fairly and equitably consider the different
19 concerns and operations of these entities.

20 Section 3. DEFINITIONS.--As used in the Electric Industry
21 Restructuring Planning Act:

22 A. "commission" means the New Mexico public
23 utility commission or its successor agency;

24 B. "customer" means a person purchasing or seeking
25 to purchase retail electric energy provided over transmission

Underscored material = new
[bracketed material] = delete

1 and distribution facilities or other electric services;

2 C. "customer choice" means the opportunity and
3 option for a customer to select an electric supplier from
4 which to purchase electric energy provided over regulated
5 transmission and distribution facilities or other energy
6 services;

7 D. "distribution" means delivery of electricity
8 for consumption to a customer, excluding generation and
9 transmission services, by a regulated provider that has access
10 to the electric grid and owns or operates the poles and wires
11 that transmit electricity from the transmission system to
12 customers;

13 E. "electric supplier" means a person selling or
14 offering to sell electric energy to a customer;

15 F. "energy services" means a competitive
16 unregulated service offered through customer choice,
17 excluding electric energy, for sale or offered for sale to a
18 customer;

19 G. "energy service provider" means a person
20 selling or offering to sell a competitive unregulated service
21 and includes an electric supplier;

22 H. "generation" means the competitive unregulated
23 electric energy supply service for sale or offered for sale to
24 a customer through customer choice; and

25 I. "transmission" means the service of

Underscored material = new
[bracketed material] = delete

1 transporting bulk electricity between generation and
2 distribution systems by a regulated provider.

3 Section 4. AUTHORIZATION FOR CUSTOMER CHOICE. -- On
4 January 1, 2001, generation and energy services shall be
5 deregulated and subject to the competitive market and customer
6 choice may begin.

7 Section 5. DIVESTITURE. -- An electric utility operating
8 and subject to the jurisdiction of the commission on the
9 effective date of the Electric Industry Restructuring Planning
10 Act shall not be required to divest or be precluded from
11 voluntarily divesting itself of any component of its operation
12 existing and operating on January 1, 1998. On January 1,
13 2001, generation and energy services shall be competitive
14 services subject to the market and not regulated by the
15 commission. Transmission and distribution shall remain
16 subject to regulation of rates, terms and conditions of
17 service by the commission or a federal oversight agency.
18 Generation and energy services shall be functionally separated
19 from transmission and distribution to ensure that competitive
20 advantages inherent in their combination are avoided.

21 Section 6. RECOGNITION OF STRANDED COSTS. -- Stranded
22 costs may result from a restructure of the electric industry
23 to customer choice. An opportunity to recover claimed
24 stranded costs shall be afforded and determined for each
25 utility claiming stranded costs considering its

Underscored material = new
[bracketed material] = delete

1 characteristics and circumstances.

2 Section 7. RECOVERY OF TRANSITION COSTS--UTILITY
3 FILINGS.--Transition costs associated with and resulting from
4 the restructure of the electric industry and the change from
5 regulation to competition for generation and energy services
6 will be incurred and may be recovered, as mitigated and
7 verified, within a reasonable period after January 1, 2001.

8 Section 8. RURAL ELECTRIC COOPERATIVES AND MUNICIPAL
9 UTILITIES--OPTIONAL PARTICIPATION IN CUSTOMER CHOICE.--Rural
10 electric cooperatives providing distribution service to the
11 public and municipal utilities shall not be subject to the
12 provisions of Section 4 of the Electric Industry Restructuring
13 Planning Act unless an election to participate in customer
14 choice and receive the benefits of Section 4 of that act is
15 made. Once made, the election may not be withdrawn. In the
16 absence of an election to participate in customer choice and
17 receive the benefits of Section 4 of that act, a municipal
18 utility or a rural electric cooperative may not extend its
19 service beyond the actual area served by it as of January 1,
20 1998 or, in the case of a municipal utility, beyond its
21 borders, whichever is greater. For purposes of this section,
22 the borders of a municipal utility include areas annexed by
23 the municipality after the effective date of the Electric
24 Industry Restructuring Planning Act.

25 Section 9. ELECTRIC SUPPLIERS AND ENERGY SERVICE

. 119860. 4

Underscored material = new
[bracketed material] = delete

1 PROVIDERS--REGISTRATION--LICENSURE.--All electric suppliers
2 and energy service providers are subject to registration and
3 licensure by the commission before operating or offering
4 service in New Mexico. Registration and licensure shall
5 require an applicant to be technically able to provide the
6 services proposed, to document its financial capability to
7 provide the proposed services and its form of ownership and to
8 comply with quality, safety, bonding and reliability
9 standards. The commission may suspend registration and
10 licensure or impose penalties if an electric supplier or
11 energy service provider violates the provisions of its license
12 or of law. Registration and licensure shall be effective on
13 January 1, 2001.

14 Section 10. REGULATION OF TRANSMISSION AND DISTRIBUTION
15 SERVICES--RULE MAKING.--The commission shall regulate
16 transmission and distribution services and shall promulgate
17 rules to implement this regulation. Transmission and
18 distribution facilities shall be made available for all
19 electric suppliers and customers on a nondiscriminatory and
20 comparable basis.

21 Section 11. VOLUNTARY RATE REDUCTIONS WITHOUT RATE CASE
22 APPROVALS.--An electric utility subject to the jurisdiction of
23 the commission may, without rate case approval by the
24 commission, voluntarily lower its rates below the levels in
25 effect on the effective date of the Electric Industry

. 119860. 4

Underscored material = new
[bracketed material] = delete

1 Restructuring Planning Act for any class of service, but shall
2 not lower any rate below the incremental cost of providing the
3 service to the affected class. A tariff filing by the
4 electric utility shall be made by the electric utility with
5 the commission at least thirty days prior to the effective
6 date of any rate reduced pursuant to this section.

7 Section 12. CUSTOMER INTERESTS, INFORMATION AND
8 PROTECTION. -- Information provided to consumers after January
9 1, 2001 by electric suppliers and energy service providers
10 shall be in standardized format to permit reasonable
11 comparisons among services and prices for all electricity
12 supply and services. Consumer protection against unfair trade
13 practices and noncompetitive activities shall be regulated by
14 the commission.

15 Section 13. REGIONAL COOPERATION--NO IMPACT ON
16 INTERSTATE COMMERCE. --After January 1, 2001, the commission
17 shall promote and encourage cooperation in the electric
18 industry, both regulated and unregulated, and with other
19 states and regions to avoid disadvantages, resulting from
20 competition, to this state, electric service providers,
21 electric utilities and customers. Commerce among the various
22 states is not impeded by the Electric Industry Restructuring
23 Planning Act and shall not be impeded by commission regulation
24 or action.

25 Section 14. COMMISSION STUDY OF INDEPENDENT SYSTEM

Underscored material = new
[bracketed material] = delete

1 OPERATOR. --The commission shall conduct a study on the
2 feasibility and advisability of and alternatives to an
3 independent system operator to direct and maintain the use of
4 and access to the transmission system existing and necessary
5 in this state or region and by October 15, 1998 shall report
6 its findings and recommendations to the restructuring
7 oversight committee.

8 Section 15. RESTRUCTURING OVERSIGHT COMMITTEE CREATED--
9 AUTHORIZATION-- RESPONSIBILITIES-- TERMINATION. --

10 A. The joint interim legislative "restructuring
11 oversight committee" is created. The committee shall function
12 from the date of its appointment until December 1 prior to the
13 first session of the forty-fifth legislature.

14 B. The restructuring oversight committee shall be
15 composed of ten members. The New Mexico legislative council
16 shall appoint five members of the committee from the house of
17 representatives and five members from the senate. At the time
18 of making the appointments, the legislative council shall
19 designate the chairman and vice chairman of the committee.

20 C. Members shall be appointed from each house so
21 as to give the two major political parties in each house the
22 same proportionate representation on the committee as prevails
23 in each house; however, each party shall not have less than
24 one member from each house on the committee. At the request
25 of the committee chairman, members may be removed from the

. 119860. 4

Underscored material = new
[bracketed material] = delete

1 committee by the New Mexico legislative council for
2 nonattendance according to legislative council policy.
3 Vacancies on the committee, however caused, may be filled by
4 the legislative council, or it may reduce the size of the
5 committee by not making replacement appointments and in that
6 case need not readjust party representation.

7 D. An action shall not be taken by the committee
8 if a majority of the total membership from either house on the
9 committee rejects that action.

10 E. After its appointment, the restructuring
11 oversight committee shall hold one organizational meeting to
12 develop a work plan and budget for the ensuing interim. The
13 work plan and budget shall be submitted to the New Mexico
14 legislative council for approval. Upon approval of the work
15 plan and budget by the legislative council, the committee
16 shall maintain oversight of the advisory study panels' work
17 authorized in Section 16 of the Electric Industry
18 Restructuring Planning Act and receive the report and
19 recommendation of the commission pursuant to Section 14 of the
20 that act and develop comprehensive implementing legislation to
21 restructure the electric industry for recommendation to the
22 first session of the forty-fourth legislature.

23 F. The restructuring oversight committee shall
24 make a report of its findings and recommendations for the
25 consideration of the first session of the forty-fourth

Underscored material = new
[bracketed material] = delete

1 legislature. The report and suggested legislation shall be
2 made available to the New Mexico legislative council on or
3 before December 15 preceding that session.

4 G. The staff for the restructuring oversight
5 committee shall be provided by the legislative council
6 service.

7 Section 16. ADVISORY STUDY PANELS CREATED--
8 AUTHORIZATION--COMPOSITION--REPORTS TO RESTRUCTURING OVERSIGHT
9 COMMITTEE.--

10 A. Further study on electric industry
11 restructuring and customer choice implementation is necessary
12 and shall be conducted by advisory study panels composed of
13 representatives of industry, intended electric suppliers and
14 energy service providers, transmission and distribution
15 providers, customers, regulators and others. The
16 restructuring oversight committee shall appoint the following
17 advisory panels to study and make recommendations on or before
18 October 15, 1998:

- 19 (1) one panel to address technical issues,
20 including:
21 (a) unbundling of generation,
22 transmission and distribution and energy services;
23 (b) utility restructuring plans;
24 (c) market power;
25 (d) anti-competitive and unfair trade

Underscored material = new
[bracketed material] = delete

1 activities;

2 (e) open access to transmission and
3 distribution;

4 (f) transition issues;

5 (g) sequencing of customer choice;

6 (h) regulation of distribution
7 services, responsibilities and service territories;

8 (i) role of rural electric
9 cooperatives, rural electric generation and transmission
10 cooperatives and municipal utilities in the competitive market
11 with or without election to participate; and

12 (j) siting of new generation;

13 (2) one panel to address financial and tax
14 issues, including:

15 (a) rates and charges;

16 (b) access and transition costs and
17 fees, including recovery methodologies;

18 (c) stranded costs and their recovery,
19 including: 1) securitization; 2) previous mitigation
20 measures; 3) term of collection period and its impact on
21 rates; and 4) impact on financial health and economic
22 viability of affected utilities;

23 (d) stranded benefits and accounting
24 for such benefits;

25 (e) municipal financing issues;

. 119860. 4

Underscored material = new
[bracketed material] = delete

- 1 (f) rural electric cooperative
2 financing issues;
- 3 (g) financing issues related to
4 generation and transmission cooperatives, including issues
5 related to bonded indebtedness;
- 6 (h) investor-owned utility financing
7 issues;
- 8 (i) tax issues, including maintenance
9 of revenue neutrality for the state and political
10 subdivisions;
- 11 (j) impacts on employment in the state;
12 and
- 13 (k) impacts on issuers, insurers and
14 holders of debt issued on behalf of rural electric
15 cooperatives to fund pollution control improvements;
- 16 (3) one panel to address consumer issues,
17 including:
- 18 (a) consumer education and information,
19 including responsibility for and the role and availability of
20 technology;
- 21 (b) the obligation to serve;
- 22 (c) the obligation to connect;
- 23 (d) regulation of standard offer;
- 24 (e) regulation of universal service;
- 25 (f) rates for regulated services;

Underscored material = new
[bracketed material] = delete

1 (g) retail aggregation;
2 (h) consumer safeguards, including:
3 1) standardization in advertising; 2) right to privacy;
4 3) requirements for special demand meters; 4) disclosure of
5 unbundled prices; 5) regulation of disconnects, complaints,
6 service quality and collections; 6) low-income assistance;
7 7) protection from unfair trade practices; 8) codes of
8 conduct; 9) anti-slamming regulations; 10) anti-trust
9 enforcement funding; 11) regulation of nonutility services
10 where cross-subsidization is found; and 12) regulation to
11 license, bond, set meter requirements and require production
12 of records to ensure compliance with a consumer protection
13 standard;

14 (i) consumer choices; and

15 (j) environmental issues; and

16 (4) one panel to address reliability and
17 safety concerns, including:

18 (a) regional cooperation;

19 (b) registration and licensing of
20 electric suppliers and energy service providers;

21 (c) responsibilities for maintenance
22 and repair service; and

23 (d) access to and adequacy of
24 interstate transmission for import and export capability.

25 B. Each study panel shall include representatives

Underscored material = new
[bracketed material] = delete

1 of the restructuring oversight committee and other groups
2 interested in the restructure of the electric industry with
3 specific knowledge of the work topic of the panel. Members of
4 each study panel shall serve without compensation or
5 reimbursement.

6 C. The staff for each study panel, if any, shall
7 be provided by the legislative council service or the
8 commission upon request of the study panel and with approval
9 of the restructuring oversight committee. Upon approval of
10 the restructuring oversight committee, a study panel may
11 retain and pay advisers and consultants to assist in
12 fulfilling the work assigned to that panel.

13 D. Each study panel shall begin its study after
14 July 1, 1998 and complete its work and prepare a written
15 report for presentation and submission to the restructuring
16 oversight committee no later than October 15, 1998.

17 Section 17. APPROVED CUSTOMER CHOICE PLANS NOT
18 AFFECTED. --The Electric Industry Restructuring Planning Act
19 shall not affect commission-approved plans voluntarily
20 submitted by an electric utility to the commission, prior to
21 January 1, 1998, that sought authorization by the commission
22 for customer choice for its electric customers.

23 Section 18. INCONSISTENCIES. --If the Electric Industry
24 Restructuring Planning Act is inconsistent with a provision of
25 the Public Utility Act or other law, then the provisions of

. 119860. 4

Underscored material = new
[bracketed material] = delete

1 the Electric Industry Restructuring Planning Act shall
2 control.

3 Section 19. APPROPRIATION. --Twenty-five thousand dollars
4 (\$25,000) is appropriated from the general fund to the
5 legislative council service for expenditure in fiscal year
6 1999 for the purpose of carrying out the provisions of Section
7 15 of the Electric Industry Restructuring Planning Act. Any
8 unexpended or unencumbered balance remaining at the end of
9 fiscal year 1999 shall revert to the general fund.

10 Section 20. DELAYED REPEAL. --The Electric Industry
11 Restructuring Planning Act is repealed effective January 1,
12 2001.

1
2
3 **FORTY-THIRD LEGISLATURE**
4 **SECOND SESSION, 1998**
5
6
7

8 **February 9, 1998**
9
10

11 **Mr. Speaker:**
12

13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**
14 **whom has been referred**
15

16 **HOUSE BILL 51**
17

18
19 **has had it under consideration and finds same to be GERMANE**
20 **in accordance with constitutional provisions.**
21

22 **Respectfully submitted,**
23
24
25

R. David Pederson, Chairman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Nicely, Olguin, Rodella, Ryan, Sanchez, Williams, S.M

Absent: None

G:\BILLTEXT\BILLW_98\H0051

Underscored material = new
[bracketed material] = delete